

### REMARKS

Claims 1, 4, 6-7, 9-16, 18-23, 49, 61-65, 67-68, 70-71, 73-77, 79 and 81-82 are pending. The Advisory Action of December 4, 2009 indicated that the Amendment and Response submitted on November 18, 2009 was entered, and overcame most of the previous grounds of rejection. The Advisory Action indicated that only the rejections of claims 79 and 81-82 would be maintained. Reconsideration and withdrawal of all remaining rejections is respectfully requested in view of the above-provided amendments and the following remarks.

The Application is After Final. The above-provided amendments include elements that where either previously before the Examiner, or were made at the suggestion of the Examiner, to place the application into condition for allowance. Thus, it is urged to be within the discretion of the Examiner to enter the above-provided amendments.

### AMENDMENTS TO THE CLAIMS

Claims 81 and 82 are amended, without prejudice, to replace "at least one conservative amino acid substitution," with "a conservative amino acid substitution." This is supported by the specification at, e.g., page 6, lines 4-9, page 25, lines 30-34. No new matter is added.

### THE TELEPHONE INTERVIEWS

Applicants' undersigned attorney expresses his appreciation for the courtesy of the telephone interviews granted by the Examiner. During a telephone interview conducted on December 18, 2009, the remaining formal grounds for rejection and objection were discussed. Agreement was reached that claim 79, as pending, is patentable under 35 USC 112, first paragraph, meeting both the written description requirement and the enablement requirement. Agreement on a proposal to amend claims 81 and 82 was deferred until the Examiner could conduct a patentability conference.

Applicants received the Interview Summary issued on December 30, 2009, pertaining to the December 18, 2009 interview, that was silent as to the above conclusion regarding claim 79. During a further telephone interview conducted on January 4, 2010, the Examiner confirmed that, in her view, claim 79 as pending, meets both the written description and enablement requirements of 35 USC 112, first paragraph. The Examiner also agreed that if claims 81 and 82

are amended, as provided herein, those claims would also meet the written description and enablement requirements of 35 USC 112, first paragraph. It was agreed that Applicants would submit this further Amendment and Response to amend claims 81 and 82.

**THE CLAIMS ARE ENABLED UNDER  
35 U.S.C. § 112, FIRST PARAGRAPH**

At item 12 of the Office Action (pages 16-22), claims 79-82 are rejected under 35 U.S.C. § 112, first paragraph, for allegedly not being enabled by the specification. The Examiner took the position that the specification did not teach how to make and use the invention with the scope as claimed. The Examiner maintained this position in the Advisory Action of December 4, 2009.

As discussed during the telephone interview of December 18, 2009, it was agreed that the specification does enable the claimed variant polypeptides of claims 79, 81 and 82, by providing preferred conserved amino acid exchanges (substitutions) and by describing the immunogenic properties of the subject <sup>13</sup>45 polypeptide. Exemplary substitutions are found in the specification at page 26, lines 14-22, and are also recited by claim 82. It is submitted that the ordinary artisan, who has read the instant patent application, will be able to prepare a polypeptide according to claims 79 and 81-82 without undue experimentation.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

**CONCLUSION**

The claims are urged to be in condition for allowance, and early action to that end is respectfully requested. If any questions remain, the Examiner is respectfully requested to contact the undersigned by telephone to resolve any such questions.

A Petition for a two-month extension of time, with the required fee for a large entity, is included herewith.

No other fees are believed to be required for entry of this Response. However, in the event that it is determined that any fee is due, or any extension of time is required, the Commissioner is authorized to treat this paper as authorizing payment of any such fee, or to treat this paper as the required petition for extension of time, and to charge any required fee to Deposit

Account No. 02-2275.

Respectfully submitted,

LUCAS & MERCANTI, LLP

  
Laurence Manber  
Registration No. 35,597

LUCAS & MERCANTI, LLP  
475 Park Avenue South  
New York, New York 10016  
Phone: 212-661-8000  
Fax: 212-661-8002